Immunocept, LLC, et al v. Fulbright & Jaworski Doc. 31

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
JAN 30 2006
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ____ DEPUTY CLERK

IMMUNOCEPT, LLC, PATRICE ANNE LEE, AND JAMES REESE MATSON	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CAUSE NO. A050A334 SS
	§	
FULBRIGHT & JAWORSKI, LLP,	§	
	§	
Defendant.	§	

RESPONSES TO PLAINTIFFS' SUBPOENA DUCES TECUM DIRECTED TO JOHN R. KIRK, JR.

Defendant Fulbright & Jaworski, L.L.P. and John R. Kirk, Jr. ("Respondents") submit the following responses to Plaintiffs' Subpoena Duces Tecum directed to John R. Kirk, Jr. as follows:

I. Preliminary Statement General Objections

Respondents' responses to Plaintiffs' Subpoena Duces Tecum directed to John R. Kirk, Jr. reflect all of the responsive information identified by Respondents before the date of these responses, pursuant to a reasonable and duly diligent search conducted in connection with this discovery in those areas where such information is expected to be found. To the extent that the Requests purport to require more, Respondents object on the grounds that: (a) the Requests seek to compel Respondents to conduct a search beyond the scope of permissible discovery contemplated by the rules of evidence and procedure, and (b) compliance with the request would impose an undue burden and expense on Respondents. The following answers are given without prejudice to Respondents' right to produce evidence of any subsequently discovered facts.

Respondents also reserve the right to assert additional privileges if warranted by new documents or evidence discovered at a later date.

Respondents do not concede that any of its responses are or will be admissible evidence at trial nor do Respondents waive any objection, whether or not asserted herein, to the use of any such response at trial.

To the extent that Respondents agree to produce documents in their possession, custody or control, Respondents is not affirming that there are any such documents, but only that it has no objection to the category of documents requested.

Respondents object to any request seeking proprietary and/or confidential information and will produce such discoverable documents only under an appropriate protective order.

Respondents object to Plaintiffs' Instructions because they seek to impose obligations beyond those required by the Federal Rules of Civil Procedure. Respondents will answer these requests and supplement its answers (if necessary), in accordance with the Federal Rules of Civil Procedure.

Respondents object to Plaintiffs' instructions regarding a claim of privilege as it purports to expand and/or modify the requirements of Federal Rules of Civil Procedure for asserting a privilege. Immunocept will answer in accordance with the Federal Rules of Civil Procedure.

Respondents object to Plaintiffs' instruction regarding supplementation on the grounds that it purports to expand or modify the supplementation requirements set forth in the Federal Rules of Civil Procedure.

Respondents object to Plaintiffs' definition of the term "document" on the grounds that it is overly broad and exceeds the scope of discovery permitted by Federal Rule of Civil Procedure 26(b). Respondents further object to Plaintiffs' definition of the term "document" as confusing and misleading. In responding to these requests, Respondents will interpret the term "document" as that term is used in Federal Rule of Civil Procedure 34(a).

Respondents agree to produce the documents for inspection and copying at counsel's office during regular business hours, provided reasonable notice is given.

II. SPECIFIC OBJECTIONS AND ANSWERS

The foregoing objections are hereby incorporated, as though fully set forth, in each of the following responses.

Request for Production No. 1:

Please produce all documents, workpapers, and calculations (other than drafts of expert reports or notes reflecting communications with counsel) that you or persons assisting you generated in the course of preparing your expert report or forming your opinions in this litigation.

Response:

Respondents object to this request on the grounds that this request is overly broad. In particular, as written the request could be construed as seeking documents beyond the subject matter described in the expert report of John R. Kirk, Jr.

Respondents object to this request on the grounds that it could be construed as seeking documents protected from disclosure by the attorney/client and work product privileges. Respondents also object to this request to the extent it requests information and documents the parties have agreed will not be discoverable in this case.

Respondents object to this request to the extent that documents requested have already been produced to Plaintiffs and/or are publicly available to Plaintiffs. As to such documents, compliance with the request would impose an unnecessary and undue burden and expense on Respondents.

Subject to and without waiving the foregoing objections, Respondents will produce all non-privileged documents responsive to this request.

Request for Production No. 2:

Please produce all documents, texts, books, studies, reports, and articles that you or persons assisting you reviewed or relied upon in the course of preparing your expert report or forming your opinions in this litigation.

Response:

Respondents object to this request on the grounds that this request is overly broad. In particular, as written the request could be construed as seeking documents beyond the subject matter described in the expert report of John R. Kirk, Jr.

Respondents object to this request on the grounds that it could be construed as seeking documents protected from disclosure by the attorney/client and work product privileges. Respondents also object to this request to the extent it requests information and documents the parties have agreed will not be discoverable in this case.

Respondents object to this request to the extent that documents requested have already been produced to Plaintiffs and/or are publicly available to Plaintiffs. As to such documents, compliance with the request would impose an unnecessary and undue burden and expense on Respondents.

Subject to and without waiving the foregoing objections, Respondents will produce all non-privileged documents responsive to this request.

Request for Production No. 3:

Please produce all published documents, texts, books, studies, reports, editorials, and articles that you have authored, co-authored, or edited that are related to hemofiltration, sepsis, or FDA approval of medical devices.

Response:

Respondents object to this request on the grounds that this request is overly broad. In particular, as written the request could be construed as seeking documents beyond the subject matter described in the expert report of John R. Kirk, Jr.

Respondents object to this request on the grounds that it could be construed as seeking documents protected from disclosure by the attorney/client and work product privileges. Respondents also object to this request to the extent it requests information and documents the parties have agreed will not be discoverable in this case.

Respondents object to this request to the extent that documents requested have already been produced to Plaintiffs and/or are publicly available to Plaintiffs. As to such documents, compliance with the request would impose an unnecessary and undue burden and expense on Respondents.

Subject to and without waiving the foregoing objections, Respondents will produce all non-privileged documents responsive to this request.

Request for Production No. 4:

Please produce all correspondence from your paper and computer files, including but not limited to e-mail correspondence, between you and Fulbright.

Response:

Respondents object to this request on the grounds that this request is overly broad in time and scope and harassing. In particular, as written the request seeks documents beyond the subject matter described in the expert report of John R. Kirk, Jr.

Respondents object to this request on the grounds that it could be construed as seeking documents protected from disclosure by the attorney/client and work product privileges. Respondents also object to this request because it seeks information and documents the parties stipulated will not be discoverable in this case.

Subject to and without waiving the foregoing objections, there are no responsive documents that relate to this lawsuit or the subject matter described in the expert report of John R. Kirk, Jr.

Request for Production No. 5:

Please produce all correspondence from your paper and computer files, including but not limited to e-mail correspondence, between you and Sally Brashears.

Response:

Respondents object to this request on the grounds that this request is overly broad. In particular, as written the request could be construed as seeking documents beyond the subject matter described in the expert report of John R. Kirk, Jr.

Respondents object to this request on the grounds that it could be construed as seeking documents protected from disclosure by the attorney/client and work product privileges. Respondents also object to this request to the extent it requests information and documents the parties have agreed will not be discoverable in this case.

Subject to and without waiving the foregoing objections, there are no responsive documents.

Request for Production No. 6:

Please produce all documents, including without limitation all drafts, articles, power point presentations, notes, or outlines, related to the following "Publications" listed on your CV attached to your expert report:

- "Does it Really Make Any Difference What I Say First? Of Are Limitations in the Claim Preamble Meaningfull", National Investors Hall of Fame, August 1998.

- "Add Through the Preamble and Omit Elements: Two Recent Cases," National Inventors Hall of Fame, September 2000.

Response:

Respondents object to this request on the grounds that this request is overly broad. In particular, as written the request could be construed as seeking documents beyond the subject matter described in the expert report of John R. Kirk, Jr. Respondents further object to the extent that the documents sought are publicly available.

Subject to and without waiving the foregoing objections, and with the expectation that Plaintiffs will provide documents relating to their experts, Respondents will conduct a search for these documents, and if they are located, will produce documents responsive to this request.

Request for Production No. 7:

Please produce copies of the last five issued patents you have prosecuted.

Response:

Respondents object to this request on the grounds that this request is overly broad. In particular, as written the request could be construed as seeking documents beyond the subject matter described in the expert report of John R. Kirk, Jr. Respondents further object because the documents sought are publicly available.

Accordingly, subject to and without waiving the foregoing objections, and with the expectation that Plaintiffs will provide documents relating to their experts, Respondents will produce documents responsive to this request.

Respectfully submitted,

By: [signature]
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ATTORNEYS FOR DEFENDANT FULBRIGHT & JAWORSKI, LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served as shown below on counsel of record on January 26, 2006.

Via Facsimile and Certified Mail, Return-Receipt Certified
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